

1 UNITED STATES COURT OF APPEALS  
2  
3 FOR THE SECOND CIRCUIT  
4

5 August Term, 2005  
6  
7

8 (Argued: May 24, 2006 Decided: September 1, 2006)  
9

10 Docket No. 04-5188-ag  
11

12 - - - - -x  
13

14 RIGOBERTO LAZO,  
15

16 Petitioner,  
17

18 - v.-  
19

20 ALBERTO GONZALES,\* Attorney General of the United States,  
21

22 Respondent.  
23

24 - - - - -x  
25

26 Before: McLAUGHLIN, JACOBS, and B.D. PARKER,  
27 Circuit Judges.  
28

29 Rigoberto Lazo petitions for review of an order of the  
30 Board of Immigration Appeals, which [i] overturned the  
31 decision of an Immigration Judge ("IJ") to grant Lazo a  
32 waiver of removability and [ii] ordered Lazo removed. Lazo  
33 argues that the BIA has no power to issue orders of removal,  
34 and that the case must be remanded to an IJ for the issuance

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\*Pursuant to Federal Rule of Appellate Procedure  
43(c)(2), Attorney General Alberto R. Gonzales is  
automatically substituted for former Attorney General John  
Ashcroft as respondent in this case

1 of such an order. We deny the petition.

2 VISUVANATHAN RUDRAKUMARAN, New  
3 York, NY, for Petitioner.

4  
5 SHANE CARGO, Assistant United  
6 States Attorney (Michael J.  
7 Garcia, United States Attorney  
8 for the Southern District of New  
9 York, of counsel, Sara L.  
10 Shudofsky, Assistant United  
11 States Attorney, on the brief).

12  
13 PER CURIAM:

14 An Immigration Judge ("IJ") found Rigoberto Lazo  
15 removable, but granted discretionary relief in view of the  
16 time elapsed since Lazo's criminal offense. By order of  
17 August 31, 2004, the Board of Immigration Appeals ("BIA") [1]  
18 overturned the IJ's grant of discretionary relief and [2]  
19 ordered Lazo removed. Lazo petitions for review on the  
20 ground that the BIA lacks power to issue an order of removal  
21 and, if it overturns discretionary relief, it must therefore  
22 remand to the IJ for entry of the formal removal order.  
23 Because the plain statutory language commands that we treat  
24 the IJ's finding of removability as an order of removal, we  
25 deny the petition for review.

26  
27 **BACKGROUND**

28 Lazo, a citizen of El Salvador, became a permanent

1 resident of the United States in 1990. In 1992, he molested  
2 his girlfriend's minor daughter, and was convicted under New  
3 York state law of sexually abusing a child of less than  
4 eleven years. Thereafter, he married and fathered a child.

5 Lazo was placed in removal proceedings in 1998, and was  
6 charged as being inadmissible due to commission of a crime  
7 involving moral turpitude. Lazo conceded the charge and  
8 sought discretionary relief from removal.

9 In 2003, the IJ granted a waiver from removability,  
10 citing the decade that had elapsed since Lazo's offense. The  
11 Department of Homeland Security appealed, and the BIA  
12 reversed the waiver in light of "the seriousness of the  
13 respondent's crime." In entering judgment, the BIA ruled  
14 that the Department of Homeland Security's "appeal is  
15 sustained and the respondent is ordered removed from the  
16 United States to El Salvador." Joint Appx. at 3 (emphasis  
17 added).

18 Lazo petitioned this Court for review, and this Court  
19 asked for supplemental briefing on the following question:

20 Whether the Board of Immigration Appeals ("BIA") has  
21 statutory authority under the Immigration and  
22 Nationality Act of 1952 ("INA"), as amended, to  
23 order the removal of an alien, or whether the BIA is  
24 instead limited to affirming or reversing an  
25 immigration judge's ruling granting discretionary  
26 relief from removal. . . .

1 Order of December 7, 2005.

2  
3 **DISCUSSION**

4 An alien may be removed only pursuant to a valid order  
5 of removal. See 8 U.S.C. § 1227(a). Lazo argues that  
6 immigration judges have exclusive power to issue orders of  
7 removal, with the BIA limited to affirming or overturning  
8 those decisions, and that the BIA therefore overstepped its  
9 authority in ordering removal in this case. The government  
10 argues that authority to order removal has in fact been  
11 conferred on the BIA (an argument we do not reach), and that  
12 in any event, the IJ did order Lazo's removal (as we hold)  
13 because the IJ found Lazo removable, and because--under the  
14 relevant statutory definition--a finding of removability is  
15 an order of removal, so that the Board may reinstate a  
16 previous order of removal by overturning an IJ's grant of  
17 discretionary relief.

18 The government's view is compelled by the INA, which  
19 defines an "order of deportation"--in the disjunctive--as  
20 "the order of the special inquiry officer . . . concluding  
21 that the alien is deportable or ordering deportation." 8  
22 U.S.C. § 1101(a)(47)(A) (emphasis added). This definition  
23 controls here because the terms "deportable" and

1 "deportation" (respectively) can be used interchangeably with  
2 the terms "removable" and "removal". Evangelista v.  
3 Ashcroft, 359 F.3d 145, 147 n. 1 (2d Cir. 2004); Duamutef v.  
4 INS, 386 F.3d 172, 176 n.4 (2d Cir. 2004). During Lazo's  
5 proceedings, the immigration judge was the "special inquiry  
6 officer." 8 C.F.R. § 1.1(1) (1996).

7 Accordingly, the statutory requirement of an order of  
8 removal is satisfied when--as here--the IJ either orders  
9 removal or concludes that an alien is removable. In that  
10 light, the BIA did not "order" Lazo's removal (as Lazo  
11 characterizes the order); the BIA has removed an impediment  
12 to the removal that was ordered by the IJ. The BIA's power  
13 to review and overturn the IJ's grant of discretionary relief  
14 is unchallenged.

15 Three of four other circuits agree. See Solano-Chicas  
16 v. Gonzales, 440 F.3d 1050, 1053-54 (8th Cir. 2006) ("where  
17 the BIA reverses the IJ's order granting cancellation of  
18 removal, the BIA, in essence, gives effect to the IJ's order  
19 of removability, for the BIA decision eliminates the  
20 impediments to removal"); Del Pilar v. U.S. Att'y Gen., 326  
21 F.3d 1154, 1156 (11th Cir. 2003) (BIA's reversal of  
22 discretionary relief reinstates prior order of removal); see  
23 also Delgado-Reynua v. Gonzales, 450 F.3d 596, 601 (5th Cir.

1 2006) (same). The Ninth Circuit has declined to construe a  
2 finding of removability as satisfying the statutory demand  
3 for an order of removal, on the ground that such a  
4 construction "would render the IJ's discretionary ability to  
5 literally 'cancel removal' meaningless, because a finding of  
6 removability in the first instance is a prerequisite to such  
7 discretionary relief." Molina-Camacho v. Ashcroft, 393 F.3d  
8 937, 940-41 (9th Cir. 2004) (citing 8 U.S.C. § 1229b(b)(1)).  
9 However, the opinion in Molina-Camacho does not consider the  
10 statutory definition that equates a finding of removability  
11 with an order of removal. Accordingly, we join the majority  
12 of circuits in concluding that the need for an "order of  
13 removal" is satisfied by an IJ's finding of removability.<sup>1</sup>

14  
15 We have considered petitioner's remaining arguments and  
16 find each of them to be without merit. For the foregoing  
17 reasons, the petition for review is denied.

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<sup>1</sup> The government's alternative argument is that the BIA is empowered to issue orders of removal in the first instance, as an "administrative officer to whom the Attorney General has delegated the responsibility," within the meaning of 8 U.S.C. § 1101(a)(47). Because we hold that an order of removal was issued by the IJ, we do not decide whether the Attorney General has in fact delegated to the BIA the authority to issue orders of removal.